

TO:	CHAIR AND MEMBERS FINANCE AND ADMINISTRATION COMMITTEE MEETING ON SEPTEMBER 28 , 2011
FROM:	MARTIN HAYWARD CITY TREASURER, CHIEF FINANCIAL OFFICER
SUBJECT:	FOREIGN SUB-CONTRACTORS

RECOMMENDATION

That on the recommendation of the Chief Financial Officer, City Treasurer, this report **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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Board of Control Meeting November 18, 2009 – Procurement of Goods and Services Policy.

BACKGROUND

On July 25, 2011, Council requested Civic Administration report back at a future meeting of the Finance & Administration Committee with respect to a recent allegation that foreign sub-contractors were working on a City project, to determine consistency with City policy.

On the specific circumstance, Administration provides the following details. The American workers in question are employed by a subcontractor. The contractor provides the City with a cost effective trenchless, structural rehabilitation that we use in select situations. The contractor uses the subcontractor regularly, and as such they receive reduced rates, making it more economical for London rate payers. The Vice President of the contractor confirmed that appropriate documents are in place for all workers. As the City uses innovative technology to address our infrastructure challenges, it is important to ensure the quality of the installation meets our expectations. Skilled and experienced staff play a role in that process.

With respect to the usage of foreign workers being employed by subcontractors on City projects, the Fair Wage Policy is in effect and we do not give any local or geographical preference as per Section 21.5 of the Procurement of Goods and Services Policy.

Canadian and Local Preferences

A Whitepaper has been produced for the Ontario Public Buyers Association by Paul Emanuelli, an internationally renowned procurement lawyer on Canadian content and local preference. His recommendations clearly indicated that there can be consequences of adopting such a policy. His concerns are as follows:

- Domestic or local suppliers being subject to retaliatory protectionist practices;
- Going against existing reciprocal non-discrimination rules in the Agreement on Internal Trade;
- The potential impact on the net expenditure and revenue to local taxpayers;
- Public institutions potentially being in direct breach of the treaty on Agreement on Internal Trade;
- Restrictions that may apply by the Competition Act;

- Potential application of the Discriminatory Business Practices Act;
- Government awards should be based on clear transparent and objective criteria and should be free from any political considerations or interference.

For these reasons the Canadian content and local preference of procurement are not recommended. A full copy of Mr. Emanuelli's report is available upon request.

PREPARED BY:	CONCURRED BY:
JOHN FREEMAN MANAGER, PURCHASING AND SUPPLY	MIKE TURNER DEPUTY CITY TREASURER
RECOMMENDED BY:	
MARTIN HAYWARD CITY TREASURER, CHIEF FINANCIAL OFFICER	

c: J. Fielding
P. McNally